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SEP 20 2010

OFFICE OF PETITIONS

In re Application of :
Henry Duong :
Application No. 10/669,668 :
Filed: September 23, 2003 :
Attorney Docket No.

ON PETITION

This is a decision on the second renewed petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed April 13, 2009.

The renewed petition is **DISMISSED**.

The application became abandoned on November 17, 2007, after a proper response was not received to the Notice of Non-Compliant Appeal Brief mailed October 16, 2007, which set a shortened period for reply of one-months from its mailing date. A Notice of Abandonment was mailed April 30, 2008.

The petition filed April 13, 2009, does not make clear its purpose. Petitioner states:

I request that Mr. Director and Kenya A. McLaughlin of the U.S. Patent Office accept to waive the dismissal so as to regulate the application for no fee or you are requested to refund the unused fees for my application as follows...

Excerpt taken from "Request for withdrawing the holding of abandonment for no fee on application no. 10/669,668 filing date 09/23,2003 Art Unit 3628", filed April 13, 2009, p. 1.

Without more, the undersigned is unable to determine the remedy that petitioner is seeking.

Notwithstanding, a review of the application file reveals that a Notice of Non-Complaint Appeal Brief was mailed on October 16, 2007. Communications were filed on January 25, 2008, February 19, 2008, and February 22, 2008, none of which were proper responses to the Notice of Non-Compliant Appeal Brief. On May 1, 2008, applicant filed an Appeal Brief and a Notice of Appeal that were not accompanied by the request for extension of time within the fifth month that would have been necessary to make the response timely. The application was properly held abandoned on November 17, 2007, because a proper and timely response to the Notice of Non-Compliant Appeal Brief was not filed within the allowable period. The petition filed March 5, 2009, did not present any additional facts or circumstances that would allow the undersigned to reach a different conclusion. The petition was dismissed by a decision mailed April 10, 2009. Likewise, the instant renewed petition, does not present any additional facts or circumstances that would allow the undersigned to reach a conclusion that holding of abandonment was improperly imposed. The petition is dismissed, accordingly.

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee (\$1,620.00 for a large entity or \$810.00 for a verified small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Inquiries regarding the sufficiency of the reply to the Notice of Non-Compliant Appeal Brief should be directed to the Technology Center. Inquiries regarding any request for refund of fees paid should be directed to the Office of Finance, Office of Refund. Telephone inquiries concerning this decision should be directed to the undersigned (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions